

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-110

October 18, 1999

DSLnet COMMUNICATIONS, LLC
Petition for Finding of Public
Convenience and Necessity to
Provide Service as a Local Exchange and
Interexchange Telephone Utility

**CORRECTED ORDER GRANTING
AUTHORITY TO PROVIDE LOCAL
EXCHANGE SERVICE AS A RESELLER,
FACILITIES-BASED AND RESOLD
INTEREXCHANGE SERVICES, AND
DEDICATED SERVICES; AND
APPROVING SCHEDULE OF RATES
AND TERMS AND CONDITIONS**

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants DSLnet Communications, LLC (DSLnet or Company) the authority to provide competitive local exchange service as a reseller, facilities-based and resold dedicated (unswitched) services, and facilities-based and resold intrastate interexchange service in the State of Maine. We approve the Company's Terms and Conditions and Rate Schedules. We also exempt DSLnet from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On February 19, 1999, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, DSLnet filed a petition with the Commission requesting authority to provide facilities-based and resold local exchange and interexchange service in Maine. Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require an additional utility to provide service in a location where another utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting DSLnet the authority to provide local exchange, dedicated and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

DSLnet's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

II. SERVICE TERRITORY

A. Interexchange Service Authority

DSLnet has requested authority to provide facilities-based and resold interexchange service throughout the state. We grant that authority. In addition, it has requested authority to provide dedicated (unswitched) services, which may be provided using its own facilities or through services purchased from other carriers. Dedicated facilities are capable of carrying either interexchange or local traffic.

B. Local Exchange Service Territory

DSLnet initially requested authority to provide facilities-based local exchange service throughout the state. It has since agreed that, for the present, it will offer service only as a reseller of switched local exchange service provided by other local exchange carriers (LECs). We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale. DSLnet's authority to provide switched local exchange service is limited to resale unless it obtains further authorization from the Commission.

We are also granting authority to DSLnet to provide switched dedicated services, which may be provided using its own or leased facilities or dedicated services

from other carriers. Dedicated facilities are capable of carrying both local and interexchange traffic. The grant of authority to provide dedicated unswitched services using facilities owned or controlled by DSLnet does not constitute authority to provide facilities-based switched local exchange service.

If DSLnet wishes to expand the scope of its authority in the future to provide facilities-based switched local exchange services, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. DSLnet shall simultaneously file amended Terms and Conditions pursuant to 35-A M.R.S.A. § 307 that state its proposed revised service territory for facilities-based local exchange service. DSLnet's proposed service territory for facilities-based local exchange service shall be limited to those areas in which it will be ready to provide facilities-based switched local exchange service within a reasonable period of time. The application shall include information establishing that readiness. It is not necessary for a CLEC with existing authority to present a full application in order to request additional service territory authority. The Commission will act expeditiously on any such application and revisions of Terms and Conditions.

III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions proposed by DSLnet to go into effect. We have reviewed the Company's, Terms, Conditions and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in DSLnet's terms and conditions and the Commission's Rules or a statute, the rule or statute will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of DSLnet's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by DSLnet to go into effect.

IV. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for DSLnet's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153 (37), the "rural exemption" of 47 U.S.C. § 251 (f) will apply. All of Maine's independent incumbent local

exchange carriers are “rural telephone companies.” A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement “is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254” Although the service territory we grant today for resold local exchange service is statewide, and DSLnet’s terms and conditions do not limit that service territory, as a practical matter it cannot offer local exchange service in the service territory of a rural ILEC until such time as that ILEC’s rural exemption is terminated.

On October 13, 1999, in Docket No. 99-543, the Commission approved an agreement between DSLnet and New England Telephone and Telegraph Company d/b/a Bell Atlantic pursuant to 47 U.S.C. § 252. As a condition of providing local exchange service, DSLnet must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

V. PAYMENT OF ACCESS CHARGES

Our approval of DSLnet’s application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules.

The Commission has granted authority to DSLnet both as a facilities-based carrier and as a switchless reseller.¹ If DSLnet provides facilities-based interexchange service, it must pay access charges directly to local exchange carriers.

Switchless resellers do not pay access charges directly to local exchange carriers. Access charges are instead paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, its underlying facilities-based carrier must also have authority to provide intrastate service in Maine. DSLnet has not specified an underlying interexchange carrier from which it will purchase interexchange services that it resells. DSLnet states that it presently plans only to provide dedicated services, which may be used for both interexchange and local traffic. If DSLnet decides in the future to provide resold interexchange services, it shall provide notice to the Commission, as required in

¹ We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

the ordering paragraphs, of the identity its underlying interexchange carrier, which must have authority to provide service in Maine. Unless that underlying carrier is AT&T, MCI WorldCom or Sprint, the carrier must certify that it will be paying access charges to local exchange carriers on behalf of the intrastate services resold by DSLnet. If DSLnet begins to use another underlying carrier, it shall notify the Commission, as required by the ordering paragraphs. If DSLnet begins to provide a facilities-based interexchange service, it shall notify the Commission and all LECs from which it obtains access, as required by the ordering paragraphs.

VI. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, DSLnet must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. DSLnet shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, DSLnet is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Although DSLnet has not requested waivers from the requirements of Chapter 210, and from 35-A M.R.S.A. §§ 707 and 708 for its local exchange service, the Commission has the authority to grant such waivers on its own motion and we do so. Because DSLnet's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, the Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.² If DSLnet resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), DSLnet

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

²The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below.

In addition, DSLnet shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

VII. OTHER REQUIREMENTS

DSLnet shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

VIII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of DSLnet Communications, LLC to provide resold competitive local exchange telephone service, facilities-based and resold dedicated services, and facilities-based and resold interexchange service in the State of Maine;

2. Exempt DSLnet Communications, LLC from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;

3. Exempt DSLnet Communications, LLC from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but DSLnet shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707 (1)(A), that results in a merger, sale or transfer of a controlling interest of DSLnet or of any entity that owns more than 50% of DSLnet. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), DSLnet Communications, LLC shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. DSLnet Communications, LLC shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, DSLnet shall amend its rate schedules and terms and conditions to reflect any change in identity; and

4. Order that DSLnet Communications, LLC's proposed terms and conditions and rate schedules consisting of pages Title – 51 Original (except pages 21 and 25, where

we approve replacement pages labeled "First Draft" filed on October 6, 1999), shall be effective on the date of this Order;

5. Order that DSLnet Communications, LLC or an underlying facilities-based interexchange carrier authorized to provide interexchange service in Maine shall pay interexchange access charges as required approved access rate schedules filed by local exchange carriers. DSLnet Communications, LLC shall notify the Commission the identity of underlying interexchange carrier 10 days prior to providing any resold interexchange service, and shall provide the Commission with certification by the underlying carrier that it will pay access charges, except that certification is not required if the underlying carrier is AT&T, MCI WorldCom or Sprint.

DSLnet Communications, LLC shall notify the Commission of any change in its underlying carrier within 30 days following the change, and shall provide the Commission with certification by the new underlying carrier that it will pay access charges, except that certification is not required if the underlying carrier is AT&T, MCI WorldCom or Sprint.

DSLnet Communications, LLC shall immediately inform the Commission and all local exchange carriers in the State of Maine from which DSLnet will be purchasing access services if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic, at which time DSLnet Communications, LLC shall begin to pay access charges directly to those local exchange carriers that have approved access charge schedules on file with the Commission; and

6. Order that DSLnet Communications, LLC shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers.

Dated at Augusta, Maine, this 18th day of October, 1999

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.